

(c) After charges have been served upon the respondent the Administrative Law Judge may, either on the Administrative Law Judge's own motion or the motion of the investigating officer or respondent, issue subpoenas for the attendance and the giving of testimony by witnesses or for the production of books, papers, documents, or any other relevant evidence.

§ 5.303 Service of subpoenas on behalf of the respondent.

Service of subpoenas issued on behalf of the respondent is the responsibility of the respondent. However, if the Administrative Law Judge finds that the respondent or respondent's counsel is physically unable to effect the service, despite diligent and bona fide attempts to do so, and if the Administrative Law Judge further finds that the existing impediment to the service of the subpoena is peculiarly within the authority of the Coast Guard to overcome, the Administrative Law Judge will have the subpoena delivered to an investigating officer participating in the case for the purpose of effecting service.

§ 5.305 Quashing a subpoena.

(a) Persons subpoenaed to appear in person or produce evidence at a hearing may, prior to or during the hearing, apply in writing to the Administrative Law Judge conducting the hearing requesting that the subpoena be quashed or modified.

(b) Upon receipt of any application requesting quashing or modification of a subpoena the Administrative Law Judge notifies the party for whom the subpoena was issued. The Administrative Law Judge may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or may deny the request.

§ 5.307 Enforcement.

Upon application and for good cause shown, or upon its own initiative, the Coast Guard will seek judicial enforcement of subpoenas issued by investigating officers or Administrative Law Judges. This is done by making application to the United States District Court, through the office of the appro-

priate U.S. Attorney, to issue an order compelling the attendance of, and/or giving of testimony by, witnesses, or for the production of books, papers, documents, or any other relevant evidence.

§ 5.309 Proof of service.

(a) The person serving a subpoena shall make a written statement setting forth the date, time and manner of service and shall return such report with or on a copy of the subpoena to the investigating officer or Administrative Law Judge who issued it. In case of failure to make service of a subpoena, the person assigned to serve such subpoena shall make a written statement setting forth the reasons the subpoena was not served. The statement should be placed on the subpoena or attached to it and returned to the investigating office or Administrative Law Judge who issued the subpoena.

(b) When service of a subpoena is made by certified mail with return receipt to be signed by the addressee only, the person mailing the subpoena shall make a written statement on a copy of the subpoena or attached to it, setting forth the date, time and location of the post office where mailed, the post office number assigned thereto. If delivered, the receipt requested shall be returned, by the person receiving the receipt, to the investigating officer or Administrative Law Judge who issued the subpoena. In case the subpoena is not delivered, any information reported by the post office regarding non-delivery shall be given to the investigating officer or Administrative Law Judge who issued the subpoena.

Subpart G—Witness Fees

§ 5.401 Payment of witness fees and allowances.

(a) Duly subpoenaed witnesses, other than Federal government employees, may apply for payment of their attendance as witnesses at an investigation or hearing conducted pursuant to this part by submitting a request for payment (Standard Form 1157) accompanied by any necessary receipts.

(b) Fees and allowances will be paid as provided by 28 U.S.C. 1821, except

that a person called to testify as an expert witness may be paid a higher fee to be fixed by the District Commander.

[CGD 82–002, 50 FR 32184, Aug. 9, 1985; 50 FR 35228, Aug. 30, 1985]

Subpart H—Hearings

§ 5.501 General.

(a) A hearing in a suspension and revocation proceeding conducted under 46 U.S.C. chapter 77, is the adjudication of the case. It is presided over and is conducted under the exclusive control of an Administrative Law Judge in accordance with applicable requirements in 5 U.S.C. 551, *et seq.* (Administrative Procedure Act), and the regulations in this part. The Administrative Law Judge shall regulate and conduct the hearing in such a manner so as to bring out all the relevant and material facts, and to insure a fair and impartial hearing.

(b) The Administrative Law Judge shall be governed by 5 U.S.C. 557(d)(1) of the Administrative Procedure Act regarding *ex parte* communications relative to these proceedings.

(c) With the consent of the investigating officer and respondent, the Administrative Law Judge may hold a prehearing conference for the settlement or simplification of the issues involved in the case. A prehearing conference may be requested by the investigating officer, respondent, or the Administrative Law Judge and is subject to the following provisions:

(1) The Administrative Law Judge sets the time and place for the conference, or conference telephone call. The conference shall not be convened unless both the investigating officer and the respondent or their authorized representative are present.

(2) Admissions or statements made at a conference are not admissible in evidence at a hearing for any reason.

(3) The Administrative Law Judge, in his opening statement at the hearing, shall enter into the hearing record the time, date, place, and persons present at any prehearing conference held.

(4) If the investigating officer and the respondent agree at the prehearing conference to stipulate to facts or amend the charge sheet, either may introduce the stipulation at the hearing

which, upon the consent of the other, will become a part of the hearing record.

(d) The procedures below are usually followed:

(1) Administrative Law Judge's opening statement.

(2) Appearances of persons at the hearing.

(3) Verification of currently valid license, certificate and/or document held by respondent.

(4) The Administrative Law Judge advises the respondent of his or her rights.

(5) Exclusion of witnesses from the hearing room.

(6) Preliminary motions, objections and/or corrections to the charges and specifications.

(7) A reading of the charges with respondent's answer.

(8) Opening statement of investigating officer.

(9) Opening statement by or on behalf of the respondent or statements in mitigation if the respondent has admitted to the charge and specification or has answered *no contest*.

(10) Submission of evidence.

(11) Argument by the investigating officer and argument by or on behalf of the respondent.

(12) The investigating officer and respondent are given the opportunity to submit proposed findings and conclusions.

(13) The Administrative Law Judge renders findings and conclusions.

(14) Submission of prior record of the respondent and evidence in aggravation or mitigation.

(15) The Administrative Law Judge renders an order.

(16) The Administrative Law Judge serves complete written decision.

(17) The Administrative Law Judge advises the respondent of the right to appeal.

(18) The Administrative Law Judge declares that the hearing is closed.

§ 5.503 Record of the hearing.

(a) The Administrative Law Judge designates an official reporter for the hearing. The reporter shall prepare the record of the hearing, including the transcript if so directed by the Administrative Law Judge.